

Message Text

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C O N F I D E N T I A L SECTION 01 OF 04 BONN 13154

E.O. 11652: GDS
TAGS: PGOV, WB, GW, US, UK, UR, FR
SUBJECT: SOVIET PROTEST ON FRG OFFICIAL'S STATEMENTS
ON BERLIN AS A LAND OF THE FRG

REFS: (A) USBER 2041; (B) BONN 12731;
(C) STATE 181704; (D) USBER 1958

BEGIN SUMMARY: THE SOVIETS PROTESTED TO THE FRG ON
AUGUST 1 AGAINST RECENT OFFICIAL FRG STATEMENTS
CONCERNING THE STATUS OF BERLIN AS A "LAND" OF THE
FEDERAL REPUBLIC. IN REJECTING THE SOVIET CHARGES ON
THE SPOT, THE FRG EXPLAINED ITS OWN LEGAL POSITION IN
SOME DETAIL. END SUMMARY

1. FRG BONN GROUP REP HAS REPORTED THAT FOREIGN
OFFICE STATE SECRETARY VAN WELL ON AUGUST 1 RECEIVED
A PROTEST FROM SOVIET CHARGE D'AFFAIRES TOKOVININ
ABOUT THE STATEMENTS BY MINISTRY OF THE INTERIOR
PARLIAMENTARY STATE SECRETARY BAUM AND STATE SECRETARY
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HARTKOPF REGARDING "LAND BERLIN." FROM AN FRG REPORT
(TRANSLATION INFRA) OF THE TOKOVININ/VAN WELL EXCHANGE,
IT APPEARS THAT THE SOVIET DEMARCHE TO THE GERMANS
WAS QUITE SIMILAR TO THAT DELIVERED TO THE ALLIES
(REF C).

2. VAN WELL GAVE TOKOVININ AN EXTENDED REPLY,

EXPLAINING IN DETAIL THE LEGAL POSITION OF BERLIN AS SEEN BY THE FRG. THOSE PROVISIONS OF THE BASIC LAW WHICH HELD BERLIN TO BE A "LAND" OF THE FEDERAL REPUBLIC WERE "SUSPENDED" BY THE QA, NOT "NULLIFIED," I.E. ALLIED RIGHTS AND RESPONSIBILITIES "OVERLAY" FRG CONSTITUTIONAL CLAIMS TO BERLIN. BAUM AND HARTKOPF HAD THUS SAID NOTHING NEW BUT SOVIET PRESS CRITICISM HAD OMITTED THE IMPORTANT REFERENCE TO ALLIED RIGHTS WHICH THE TWO HAD MADE IN THEIR REMARKS. THE FRG EXPECTED THAT THE SOVIET UNION WOULD EXAMINE THIS MATTER IN LIGHT OF THE FRG'S "COMPLETE" POSITION.

3. TOKOVININ EXPRESSED INCOMPREHENSION FOR VAN WELL'S DISTINCTION BETWEEN THE FRG'S CONSTITUTIONAL POSITION AND THE "INTERNATIONAL-LAW" LEVEL OF ALLIED RIGHTS AND RESPONSIBILITIES. HE REMARKED THAT "INTERPRETATION OF THE QA WAS A MATTER FOR THE FOUR POWERS AND NOT FOR A PARLIAMENTARY STATE SECRETARY OF THE FRG." THE QA WAS A WHOLE AND VIOLATION OF PARTS OF IT WERE NOT GOOD FOR WEST BERLIN AND DETENTE.

4. COMMENT: IT IS UNFORTUNATE THAT HARTKOPF MADE THE PUBLIC STATEMENTS THAT HE DID. BAUM'S POSITION IS MORE DEFENSIBLE SINCE HE WAS RESPONDING TO THE QUESTION OF A MEMBER OF THE BUNDESTAG. BOTH STATEMENTS
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ARE A REFLECTION OF THE FRG POSITION AS SET DOWN IN THE JULY 31, 1973, DECISION OF THE FEDERAL CONSTITUTIONAL COURT ON THE "BASIC TREATY" BETWEEN THE FEDERAL REPUBLIC AND THE GDR, A POSITION WHICH THE ALLIES DO NOT FULLY SHARE AND ONE WHICH HAS BEEN A CONTINUING SOURCE OF SOVIET IRRITATION (AND PROTESTS) OVER THE YEARS. NONETHELESS, AS PREVIOUSLY REPORTED, BAUM CAREFULLY INCLUDED IN HIS REPLY THE RELEVANCE OF ALLIED RIGHTS AND RESPONSIBILITIES TO FRG CONSTITUTIONAL THEORY.

5. IT IS PARTICULARLY UNFORTUNATE THAT VAN WELL CHOSE, AT THE END OF HIS ANSWER TO TOKOVININ, TO ADD THAT THE ALLIES HAD NOT OBJECTED TO THE HARTKOPF AND BAUM STATEMENTS. BY SO DOING, HE SUGGESTS THAT WE APPROVE OF THE FRG POSITION. THE EMBASSY CONSIDERED RAISING THE HARTKOPF/BAUM STATEMENTS IN THE BONN GROUP AT THE TIME THAT THEY WERE FIRST MADE PUBLIC BUT DECIDED, IN VIEW OF THE FACT THAT THE FRG IS CONSTITUTIONALLY MANDATED TO TAKE THE POSITION IT DID, NOT TO DO SO. FOR US TO SEEK TO TELL THE GERMANS WHAT THEY SHOULD AND SHOULD NOT SAY IN THE FRG ABOUT

FRG POLICY, ESPECIALLY SINCE BAUM WAS RESPONDING TO

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A BUNDESTAG QUESTION (ALBEIT A LOADED ONE), SEEMED TO US TO BE A FORM OF INTERFERENCE IN THEIR INTERNAL AFFAIRS WHICH WE SHOULD AVOID. WE PLAN, IN THE BONN GROUP DISCUSSION OF THE ALLIED REPLY TO THE BAUM STATEMENT, TO NOTE THAT THE FRG SHOULD NOT BY IMPLICATION ASSOCIATE THE ALLIES WITH THE FRG POSITION ON THE STATUS OF BERLIN SINCE OUR POSITIONS ARE NOT ENTIRELY CONGRUENT.

6. A TRANSLATION OF THE VAN WELL/TOKOVININ MEMCON
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FOLLOWS:

BEGIN TEXT

ON INSTRUCTIONS FROM HIS GOVERNMENT, TOKOVININ DELIVERED AN ORAL STATEMENT AS FOLLOWS: ACCORDING TO PRESS REPORTS, THE PARLIAMENTARY STATE SECRETARY IN THE FEDERAL MINISTRY OF THE INTERIOR, BAUM, IN THE NAME OF THE FEDERAL GOVERNMENT RECENTLY STATED IN REPLY TO A QUESTION FROM AN OPPOSITION BUNDESTAG DEPUTY THAT "WESTBERLIN IS A FEDERAL STATE OF THE FEDERAL REPUBLIC OF GERMANY". ACCORDING TO HIS STATEMENT ALL CONSTITUTIONAL ORGANS IN THE FEDERAL REPUBLIC OF GERMANY HAVE TO OPERATE ON THE BASIS OF THIS LEGAL POSITION ("VON DIESER RECHTSPOSITION AUSGEHEN."). THIS STATEMENT STANDS IN FLAGRANT CONTRADICTION TO THE QUADRIpartite AGREEMENT, IN WHICH IT IS WRITTEN THAT THE WESTERN SECTORS OF BERLIN ARE, AS IN THE PAST, NO CONSTITUENT PART OF THE FEDERAL REPUBLIC OF GERMANY AND WILL ALSO CONTINUE NOT TO BE GOVERNED BY IT. THESE PROVISIONS ARE, AS IS KNOWN, ASSOCIATED WITH A REFERENCE TO THE CONSULTATIONS OF THE THREE POWERS WITH THE FEDERAL REPUBLIC OF GERMANY. THE REFERENCE TO THE RIGHTS OF THE THREE POWERS IN THE ANSWER OF THE PARLIAMENTARY STATE SECRETARY CHANGES NOTHING IN RESPECT OF THE DEMAND WHICH HAS BEEN RAISED BY THE FEDERAL GOVERNMENT TO TREAT WESTBERLIN AS A CONSTITUENT PART OF THE FEDERAL REPUBLIC ("BUND") AND TO MAKE THE POLICY OF THE FEDERAL GOVERNMENT ACCORDINGLY. THIS DEMAND WILL HAVE TO HAVE SERIOUS CONSEQUENCES FOR THE NORMAL FUNCTIONING OF THE QUADRIpartite AGREEMENT, IN WHICH THE FEDERAL GOVERNMENT NO LESS THAN OTHER PARTIES

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SHOULD BE INTERESTED. THE SOVIET SIDE EXPECTS THAT THE FEDERAL GOVERNMENT WILL DULY CORRECT THE COMMENTS OF PARLIAMENTARY STATE SECRETARY BAUM AND WILL, IN ITS POLICIES ("POLITIK"), STRICTLY FULFILL THE PROVISIONS OF THE QUADRIpartite AGREEMENT THAT WESTBERLIN DOES NOT BELONG TO AND CANNOT BE GOVERNED BY THE FEDERAL REPUBLIC OF GERMANY.

THE STATE SECRETARY REPLIED: WE HAVE GATHERED FROM THE SOVIET PRESS REPORTS THAT THE COMMENTS OF STATE SECRETARIES HARTKOPF AND BAUM WERE ENTIRELY

INCORRECTLY PRESENTED THERE. BOTH STATE SECRETARIES
HAD QUITE CORRECTLY REFERRED TO THE FACT THAT THE
CONSTITUTIONAL SITUATION, AS IT HAS BEEN INTERPRETED
BY THE FEDERAL CONSTITUTIONAL COURT, IS OVERLAIN BY
THE RESERVED RIGHTS OF THE THREE POWERS.
THIS LEGAL SITUATION WAS KNOWN TO THE SOVIET UNION
AT THE CONCLUSION OF THE QUADRIpartite AGREEMENT. IT
WAS THOROUGHLY DISCUSSED. THE THREE POWERS CONSULTED
WITH US CONTINUOUSLY. WITH REGARD TO THE CONSTITU-

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TIONAL SITUATION, THE QUADRIpartite AGREEMENT (QA)
SPOKE ONLY OF "SUSPENSION", AND NOT OF LEGAL
NULLIFICATION. THE FEDERAL GOVERNMENT HAS NEVER LEFT
ANY DOUBT THAT IT WOULD RESPECT THIS SUSPENSION.

THE LEGAL SITUATION IS AS FOLLOWS: WE CONCLUDED
A TREATY IN 1952/1954 WITH THE WESTERN POWERS ON
THE RELATIONS BETWEEN THE FEDERAL REPUBLIC OF GERMANY
AND THE THREE POWERS, IN WHICH THE THREE POWERS
RESERVED CERTAIN RIGHTS AND RESPONSIBILITIES TO THEM-
SELVES. WE RATIFIED THIS TREATY. WE ADHERED TO IT.
THE THREE POWERS, IN EXERCISE OF THEIR RESERVED RIGHTS

AND RESPONSIBILITIES, NEGOTIATED THE QA WITH THE USSR AND NOTIFIED US AFTER IT WAS CONCLUDED. IN HIS REPLY TO THE LETTER OF NOTIFICATION, THE FEDERAL CHANCELLOR STATED THAT WE TOOK NOTE OF THE QA AND THAT WE OF COURSE RESPECTED IT, AS WE RESPECTED THE RESERVED RIGHTS AND RESPONSIBILITIES OF THE THREE POWERS IN CONFIDENTIAL

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ARTICLE 2 OF THE (GERMANY) TREATY. OUR CONSTITUTION CONTAINS REFERENCES TO LAND BERLIN. THESE HAVE NOT BEEN ELIMINATED BY THE QA, RATHER THEIR SUSPENSION BY THE WESTERN POWERS HAS BEEN CONFIRMED. THUS, THE INTERNATIONAL-LAW LEVEL OVERLIES THE CONSTITUTIONAL-LAW LEVEL. THIS WAS ALREADY SO PRESENTED IN THE COMMENTARY TO THE QA WHICH WAS PUBLISHED BY THE FEDERAL GOVERNMENT ON SEPTEMBER 3, 1971. STATE SECRETARIES HARTKOPF AND BAUM THUS SAID NOTHING NEW. IT IS OUT OF THE QUESTION ("KEINE REDE SEIN") THAT ATTEMPTS HAVE BEEN MADE TO REALIZE DEMANDS WHICH ARE IN CONTRADICTION TO THE QA. PARLIAMENTARY STATE SECRETARY BAUM GAVE AN EXPLANATION IN THE BUNDESTAG IN REPLY TO A PARLIAMENTARY QUESTION, OCCASIONED BY A DISCUSSION WHICH HAD ARISEN CONCERNING THE COMMENT OF STATE SECRETARY HARTKOPF AT A CONVENTION OF THE KURATORIUM UNTEILBARES DEUTSCHLAND. WE MUST REJECT AS UNJUSTIFIED THE REPROACH THAT DEMANDS IN CONTRADICTION TO THE QA ARE BEING MADE. WE HAVE ALWAYS STATED, AS IN THE LAST STATE OF THE NATION ADDRESS-- AND WILL DO SO IN THE FUTURE AS WELL-- THAT WE RESPECT THE QA. WE ARE ASTONISHED THAT, IN TAKING ITS POSITION, THE SOVIET PRESS HAS OMITTED AN IMPORTANT SENTENCE IN THE COMMENT BY PARLIAMENTARY STATE SECRETARY BAUM.

TOKOVININ IN HIS REPLY EXPRESSED INCOMPREHENSION FOR THE DISTINCTION BETWEEN A CONSTITUTIONAL-LAW AND AN INTERNATIONAL-LAW LEVEL. HE STATED THAT HE WAS NOT SATISFIED WITH THE ANSWER OF THE STATE SECRETARY AND ANNOUNCED THAT MOSCOW WOULD HAVE TO CONSIDER STEPS, EVEN THOUGH HE DID NOT YET KNOW WHICH ONES, IN ORDER TO REAFFIRM THE BASIC PROVISION OF THE QA. CONFIDENTIAL

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HE POINTED OUT, IN PARTICULAR, THAT PARLIAMENTARY STATE SECRETARY BAUM HAD SPOKEN OF BERLIN, AND NOT, SAY, OF THE WESTERN SECTORS ONLY. TOKOVININ INTER-

PRETED THE QA IN SUCH A WAY THAT THE PROVISIONS IN QUESTION OF THE BASIC LAW AND THE BERLIN CONSTITUTION WERE "NOT VALID". HE ASKED WHAT THEN REMAINED OF THE QA WHEN THESE PROVISIONS WERE HELD TO BE VALID. HE ADDED THAT ALL PARTS OF THE QA WERE CONNECTED AND WERE IN A BALANCE. IT WAS NOT GOOD FOR WESTBERLIN AND DETENTE IF ONE VIOLATED PARTS OF IT. INTERPRETATION OF THE QA WAS A MATTER FOR THE FOUR POWERS AND NOT FOR A PARLIAMENTARY STATE SECRETARY OF THE FRG.

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IF HE REPORTED NOW TO MOSCOW THAT THE STATEMENTS OF PARLIAMENTARY STATE SECRETARY BAUM HAD NOT BEEN CORRECTED BUT HAD BEEN CONFIRMED, IT WOULD NOT BE UNDERSTOOD THERE. THE STATEMENT THAT BERLIN WAS A STATE OF THE FEDERAL REPUBLIC OF GERMANY REPRESENTED A GROSS VIOLATION OF THE QA. THIS HAD NOT BEEN SAID EARLIER, BUT ONLY IN THE RECENT PAST. FURTHERMORE, THE THEORY DID NOT STAND ALONE, BUT BROUGHT PRACTICAL STEPS ALONG WITH IT. EARLIER IT HAD BEEN SAID ON THE OTHER SIDE THAT WESTBERLIN LAY ON THE TERRITORY OF THE GDR. AFTER THE CONCLUSION OF THE QA THIS HAD NOT BEEN REPEATED. ON THE OTHER HAND, IT WAS NOT

COMPREHENSIBLE WHY, AFTER THE QA, EVERYTHING IN THE
FEDERAL REPUBLIC OF GERMANY REMAINED AS IT WAS
BEFORE.

THE STATE SECRETARY EMPHASIZED AGAIN: STATE
SECRETARIES HARTKOPF AND BAUM HAD NOT EXPRESSED A
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NEW ATTITUDE OF THE FEDERAL GOVERNMENT. THEY ONLY
REPEATED, BECAUSE IT IS A QUESTION OF CURRENT INTEREST
("AUS AKTUELLEM ANLASS"), WHAT THE FEDERAL GOVERNMENT
HAS SAID AGAIN AND AGAIN, I.E. WE HAVE A PARTICULAR
CONSTITUTIONAL POSITION WHICH IS OVERLAIN BY THE
RESERVED RIGHTS OF THE THREE POWERS, AND WHICH
DETERMINES THE SITUATION FOR US. THE STATE SECRETARY
ONCE AGAIN REJECTED THE SOVIET REPROACHES AND REQUESTED
THAT THE SOVIET UNION REVIEW ITS POSITION IN CONSIDERA-
TION OF HIS EXPLANATION. WE EXPECTED THAT THE COMPLETE
POSITION OF THE FEDERAL GOVERNMENT WOULD BE THE BASIS
FOR THE SOVIET UNION'S DECISIONS. THE STATE SECRETARY
COMMENTED FURTHER THAT THE WESTERN POWERS, WITH WHOM
THE FRG HAD CONSULTED ON ITS INTERPRETATIVE STATEMENTS
ON THE QA AND THE RELEVANT PROBLEMS ("DIE EINSCHLAEGIGE
PROBLEMATIK"), HAD NOT MADE A DEMARCHE TO THE FEDERAL
GOVERNMENT CONCERNING THE STATEMENTS OF STATE SECRE-
TARIES HARTKOPF AND BAUM.
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